

ASSEMBLY BILL

No. 1700

Introduced by Assembly Member Medina

February 13, 2014

An act to amend Sections 1923.2 and 1923.5 of the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1700, as introduced, Medina. Reverse mortgages: notifications.

Existing state and federal law regulate the activities of financial institutions. Existing state law regulates reverse mortgage loans and requires a lender to refer a prospective borrower to a housing counseling agency, as specified, and prohibits a lender from accepting a final and complete application for a reverse mortgage loan or assessing any fees without receiving certification, as specified, that the borrower has received loan counseling. Existing law prohibits a lender from taking a reverse mortgage application before having provided an applicant a specified disclosure notice and written checklist.

This bill would prohibit a lender from taking a reverse mortgage application or assessing any fees until seven days from the date of loan counseling, as specified. The bill would make specified changes to the disclosure notice. The bill would delete the requirement that the lender provide a written checklist and would, instead, prohibit a lender from taking a reverse mortgage application unless the applicant has received from the lender a specified reverse mortgage worksheet guide. The bill would require that the worksheet contain certain issues that the borrower is advised to consider and discuss with the counselor. The bill would require the counselor and the prospective borrower to sign the worksheet, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) A reverse mortgage is a loan that allows a
2 homeowner to convert home equity into tax-free cash payments.
3 More than 90 percent of all reverse mortgages are obtained through
4 the Home Equity Conversion Mortgage (HECM) program
5 sponsored by the United States Department of Housing and Urban
6 Development. Many senior citizens use reverse mortgage payments
7 to supplement retirement income or pay medical expenses.
8 Although the HECM program has been in existence since 1989,
9 the program has seen rapid growth only in the past few years. As
10 the population ages, this growth rate is expected to accelerate. The
11 growth rate is also expected to increase as sales agents and lenders
12 turn from the declining subprime and conventional mortgage
13 market to the rapidly growing market for reverse mortgages.

14 (b) Because reverse mortgage decisionmaking involves a number
15 of complex issues, before committing to a loan every senior should
16 contemplate possible negative consequences. Every prospective
17 purchaser of a reverse mortgage should study and discuss with an
18 HUD-approved reverse mortgage counselor the items in the reverse
19 mortgage worksheet guide specified in subdivision (b) of Section
20 1923.5 of the Civil Code.

21 (c) In specifying these requirements, it is not the intent of the
22 Legislature to discourage the use of reverse mortgages, which
23 often provide substantial benefits to senior citizens. Rather, these
24 requirements seek to ensure that senior citizens will make informed
25 decisions and that persons who offer, sell, or arrange the sale of
26 reverse mortgages to senior citizens will act in the best interest of
27 reverse mortgage loan borrowers.

28 SEC. 2. Section 1923.2 of the Civil Code is amended to read:
29 1923.2. A reverse mortgage loan shall comply with all of the
30 following requirements:

31 (a) Prepayment, in whole or in part, shall be permitted without
32 penalty at any time during the term of the reverse mortgage loan.
33 For the purposes of this section, penalty does not include any fees,
34 payments, or other charges that would have otherwise been due
35 upon the reverse mortgage being due and payable.

1 (b) A reverse mortgage loan may provide for a fixed or
2 adjustable interest rate or combination thereof, including compound
3 interest, and may also provide for interest that is contingent on the
4 value of the property upon execution of the loan or at maturity, or
5 on changes in value between closing and maturity.

6 (c) A reverse mortgage may include costs and fees that are
7 charged by the lender, or the lender's designee, originator, or
8 servicer, including costs and fees charged upon execution of the
9 loan, on a periodic basis, or upon maturity.

10 (d) If a reverse mortgage loan provides for periodic advances
11 to a borrower, these advances shall not be reduced in amount or
12 number based on any adjustment in the interest rate.

13 (e) A lender who fails to make loan advances as required in the
14 loan documents, and fails to cure an actual default after notice as
15 specified in the loan documents, shall forfeit to the borrower treble
16 the amount wrongfully withheld plus interest at the legal rate.

17 (f) The reverse mortgage loan may become due and payable
18 upon the occurrence of any one of the following events:

19 (1) The home securing the loan is sold or title to the home is
20 otherwise transferred.

21 (2) All borrowers cease occupying the home as a principal
22 residence, except as provided in subdivision (g).

23 (3) Any fixed maturity date agreed to by the lender and the
24 borrower occurs.

25 (4) An event occurs which is specified in the loan documents
26 and which jeopardizes the lender's security.

27 (g) Repayment of the reverse mortgage loan shall be subject to
28 the following additional conditions:

29 (1) Temporary absences from the home not exceeding 60
30 consecutive days shall not cause the mortgage to become due and
31 payable.

32 (2) Extended absences from the home exceeding 60 consecutive
33 days, but less than one year, shall not cause the mortgage to become
34 due and payable if the borrower has taken prior action which
35 secures and protects the home in a manner satisfactory to the
36 lender, as specified in the loan documents.

37 (3) The lender's right to collect reverse mortgage loan proceeds
38 shall be subject to the applicable statute of limitations for written
39 loan contracts. Notwithstanding any other provision of law, the
40 statute of limitations shall commence on the date that the reverse

1 mortgage loan becomes due and payable as provided in the loan
2 agreement.

3 (4) The lender shall prominently disclose in the loan agreement
4 any interest rate or other fees to be charged during the period that
5 commences on the date that the reverse mortgage loan becomes
6 due and payable, and that ends when repayment in full is made.

7 (h) The first page of any deed of trust securing a reverse
8 mortgage loan shall contain the following statement in 10-point
9 boldface type: "This deed of trust secures a reverse mortgage loan."

10 (i) A lender or any other person that participates in the
11 origination of the mortgage shall not require an applicant for a
12 reverse mortgage to purchase an annuity as a condition of obtaining
13 a reverse mortgage loan.

14 (1) The lender or any other person that participates in the
15 origination of the mortgage shall not do either of the following:

16 (A) Participate in, be associated with, or employ any party that
17 participates in or is associated with any other financial or insurance
18 activity, unless the lender maintains procedural safeguards designed
19 to ensure that individuals participating in the origination of the
20 mortgage shall have no involvement with, or incentive to provide
21 the prospective borrower with, any other financial or insurance
22 product.

23 (B) Refer the borrower to anyone for the purchase of an annuity
24 or other financial or insurance product prior to the closing of the
25 reverse mortgage or before the expiration of the right of the
26 borrower to rescind the reverse mortgage agreement.

27 (2) This subdivision does not prevent a lender from offering or
28 referring borrowers for title insurance, hazard, flood, or other peril
29 insurance, or other similar products that are customary and normal
30 under a reverse mortgage loan.

31 (3) A lender or any other person who participates in the
32 origination of a reverse mortgage loan to which this subdivision
33 would apply, and who complies with paragraph (1) of subsection
34 (n), and with subsection (o), of Section 1715z-20 of Title 12 of
35 the United States Code, and any regulations and guidance
36 promulgated under that section, as amended from time to time, in
37 offering the loan, regardless of whether the loan is originated
38 pursuant to the program authorized under Section 1715z-20 of
39 Title 12 of the United States Code, and any regulations and

1 guidance promulgated under that section, shall be deemed to have
2 complied with this subdivision.

3 (j) Prior to accepting a final and complete application for a
4 reverse mortgage the lender shall provide the borrower with a list
5 of not fewer than 10 counseling agencies that are approved by the
6 United States Department of Housing and Urban Development to
7 engage in reverse mortgage counseling as provided in Subpart B
8 of Part 214 of Title 24 of the Code of Federal Regulation. The
9 counseling agency shall not receive any compensation, either
10 directly or indirectly, from the lender or from any other person or
11 entity involved in originating or servicing the mortgage or the sale
12 of annuities, investments, long-term care insurance, or any other
13 type of financial or insurance product. This subdivision does not
14 prevent a counseling agency from receiving financial assistance
15 that is unrelated to the offering or selling of a reverse mortgage
16 loan and that is provided by the lender as part of charitable or
17 philanthropic activities.

18 (k) A lender shall not accept a final and complete application
19 for a reverse mortgage loan from a prospective applicant or assess
20 any fees upon a prospective applicant *until the elapse of seven*
21 *days from the date of counseling, as evidenced by the counseling*
22 *certification, and* without first receiving certification from the
23 applicant or the applicant's authorized representative that the
24 applicant has received counseling from an agency as described in
25 subdivision (j) and that the counseling was conducted in person,
26 unless the certification specifies that the applicant elected to receive
27 the counseling in a manner other than in person. The certification
28 shall be signed by the borrower and the agency counselor, and
29 shall include the date of the counseling and the name, address, and
30 telephone number of both the counselor and the applicant.
31 Electronic facsimile copy of the housing counseling certification
32 satisfies the requirements of this subdivision. The lender shall
33 maintain the certification in an accurate, reproducible, and
34 accessible format for the term of the reverse mortgage.

35 (l) A lender shall not make a reverse mortgage loan without
36 first complying with, or in the case of brokered loans ensuring
37 compliance with, the requirements of Section 1632, if applicable.

38 SEC. 3. Section 1923.5 of the Civil Code is amended to read:

39 1923.5. (a) No reverse mortgage loan application shall be
40 taken by a lender unless the loan applicant, prior to receiving

1 counseling, has received from the lender the following plain
2 language statement in conspicuous 16-point type or larger, advising
3 the prospective borrower about counseling prior to obtaining the
4 reverse mortgage loan:

5
6 IMPORTANT NOTICE
7 TO REVERSE MORTGAGE LOAN APPLICANT
8

9 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
10 TRANSACTION. IF YOU DECIDE TO OBTAIN A REVERSE
11 MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL
12 DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND
13 FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.
14 IT IS THEREFORE IMPORTANT TO UNDERSTAND THE
15 TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT
16 *ON YOUR IMMEDIATE FUTURE NEEDS*. BEFORE ENTERING
17 INTO THIS TRANSACTION, YOU ARE REQUIRED TO
18 CONSULT WITH AN INDEPENDENT *REVERSE MORTGAGE*
19 *LOAN COUNSELOR TO DISCUSS WHETHER OR NOT A*
20 *REVERSE MORTGAGE IS SUITABLE FOR YOU*. A LIST OF
21 APPROVED COUNSELORS WILL BE PROVIDED TO YOU
22 BY THE LENDER.

23 SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST
24 USING THE PROCEEDS OF A REVERSE MORTGAGE TO
25 PURCHASE AN ANNUITY OR RELATED FINANCIAL
26 PRODUCTS. IF YOU ARE CONSIDERING USING YOUR
27 PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS
28 THE FINANCIAL IMPLICATIONS OF DOING SO WITH
29 YOUR COUNSELOR AND FAMILY MEMBERS.
30

31 (b) (1) In addition to the plain statement notice described in
32 subdivision (a), no reverse mortgage loan application shall be taken
33 by a lender unless the lender provides the prospective borrower,
34 prior to his or her meeting with a counseling agency on reverse
35 mortgages, with a ~~written checklist~~ *reverse mortgage worksheet*
36 *guide*, or in the event that the prospective borrower seeks
37 counseling prior to requesting a reverse mortgage loan application
38 from the reverse mortgage lender, the counseling agency shall
39 provide the prospective borrower with a written checklist *reverse*
40 *mortgage worksheet guide*. The ~~written checklist~~ *reverse mortgage*

1 *worksheet guide* shall conspicuously alert the prospective borrower,
2 in 12-point type or larger, that he or she should discuss with the
3 agency counselor the following issues:

4 (A) How unexpected medical or other events that cause the
5 prospective borrower to move out of the home, either permanently
6 or for more than one year, earlier than anticipated will impact the
7 total annual loan cost of the mortgage.

8 (B) The extent to which the prospective borrower's financial
9 needs would be better met by options other than a reverse
10 mortgage, including, but not limited to, less costly home equity
11 lines of credit, property tax deferral programs, or governmental
12 aid programs.

13 (C) Whether the prospective borrower intends to use the
14 proceeds of the reverse mortgage to purchase an annuity or other
15 insurance products and the consequences of doing so.

16 (D) The effect of repayment of the loan on nonborrowing
17 residents of the home after all borrowers have died or permanently
18 left the home ~~that a 12-consecutive month absence by the borrower~~
19 ~~will cause the reverse mortgage loan to become due.~~

20 ~~(E) The prospective borrower's ability to finance routine or~~
21 ~~catastrophic home repairs, especially if maintenance is a factor~~
22 ~~that may determine when the mortgage becomes payable.~~

23 (E) *Reverse mortgages require three continuous obligations of*
24 *the borrower: maintenance and repair of the home, payment of*
25 *property taxes, and payment of property insurance premiums. A*
26 *failure to do any of these things could lead to default on the reverse*
27 *mortgage.*

28 (F) The impact that the reverse mortgage may have on the
29 prospective borrower's tax obligations, eligibility for government
30 assistance programs, and the effect that losing equity in the home
31 will have on the borrower's estate and heirs.

32 (G) The ability of the borrower to finance alternative living
33 accommodations, such as assisted living or long-term care nursing
34 home registry, after the borrower's equity is depleted.

35 (H) *That a reverse mortgage is a compounding loan and that*
36 *the debt may accelerate over time.*

37 (I) *The risks associated with using the proceeds of a reverse*
38 *mortgage to purchase investment products.*

39 (2) ~~The checklist~~ *reverse mortgage worksheet guide* required
40 in paragraph (1) shall be signed by the agency counselor, if the

1 counseling is done in person, and by the prospective borrower and
2 returned to the lender along with the certification of counseling
3 required under subdivision (k) of Section 1923.2, and the loan
4 application shall not be approved until the signed checklist is
5 provided to the lender. A copy of the ~~checklist~~ *reverse mortgage*
6 *worksheet guide* shall be provided to the borrower.